

1 MacCONAGHY & BARNIER, PLC  
JOHN H. MacCONAGHY, SBN 83684  
2 JEAN BARNIER, SBN 231683  
MONIQUE JEWETT-BREWSTER, SBN 217792  
3 645 First St. West. Suite D  
Sonoma, California 95476  
4 Telephone: (707) 935-3205  
Facsimile: (707) 935-7051  
5 Email: macclaw@macbarlaw.com

6 Counsel for Secured Creditor  
JIM FRENCH STUDIOS, INC.

7  
8 UNITED STATES BANKRUPTCY COURT  
9  
10 NORTHERN DISTRICT OF CALIFORNIA

11 In re )  
12 PROWEST MEDIA CORPORATION, )  
a California Corporation, )  
13 Debtor. )  
14 \_\_\_\_\_ )

Case No. 10-12153  
(Chapter 11)

**OBJECTION OF JIM FRENCH  
STUDIOS, INC TO CONFIRMATION  
OF DEBTOR'S PLAN OF  
REORGANIZATION, DATED  
JULY 7, 2010**

Date: December 10, 2010  
Time: 9:00 a.m.  
Santa Rosa Courtroom–Jaroslovsky

18 **INTRODUCTION**

19 Jim French Studios, Inc. ("JFS") is wholly owned by Jim French. Mr. French is 78 years  
20 old and in ill health. Starting in 1967 he built the business that is now owned by the Debtor  
21 Prowest Media. In June, 2003, he sold the business to Prowest for \$2,500,000.00. The terms  
22 provided for a \$250,000 cash down payment, with the balance paid by a Promissory Note  
23 secured by a blanket lien on all of the assets, including the lucrative adult website,  
24 [www.coltstudiogroup.com](http://www.coltstudiogroup.com). He is currently owed approximately \$1,500,000. He is the only  
25 secured creditor and by far the largest unsecured creditor of the Debtor, who has been engaged in  
26 a multi-year campaign to cheat him out of his collateral, including the gross misuse of his cash

1 collateral in this case.

2 **FACTUAL AND PROCEDURAL BACKGROUND**

3 After years of stalling in State Court without making payments to either JFS or the IRS  
4 (\$600,000 in unpaid payroll taxes) Prowest filed this Chapter 11 case.

5 On June 17, 2010, JFS filed a Motion for Relief from Stay. On August 12, 2010, a  
6 combined final evidentiary hearing was held on JFS's Motion for Relief from Stay and the  
7 Debtor's Motion to Use Cash Collateral. At the conclusion of the hearing, the Court **denied** the  
8 Debtor's Motion to Use Cash Collateral, see Docket No. 42, and granted JFS's Motion for Relief  
9 from Stay, see Docket No. 43. Smirking at the financial exhaustion of a sick old man, the  
10 Debtor has since refused entry onto its business premises to allow JFS to retrieve its collateral.

11  
12 Immediately after the August 12 hearing, JFS filed a Motion for Rule 2004 Examination  
13 which, among other things, sought production of the actual cancelled checks and other primary  
14 financial documents of the Debtor to investigate the Debtor's use and/or misuse of its cash  
15 collateral. The Debtor stalled this by filing a Motion for Protective Order. While the Motion for  
16 Protective Order was pending, and on September 17, 2010, JFS filed a Motion to Convert Case  
17 to Chapter 7 due to the Debtor's misuse of cash collateral. Both the hearing on the Motion for  
18 Protective Order and the Motion to Convert were set for October 22.

19 The Debtor promised to produce the missing documents before October 22, but this did  
20 not occur. At the October 22 hearing, the Debtor represented to the Court that it had sequestered  
21 the cash collateral of JFS and that it would immediately produce all of the missing documents.  
22 Neither of these things were true.

23 The case was again before the Court on November 12, where the Debtor sought leave to  
24 pay a post petition retainer. Again, the representation was made that cash collateral was being  
25 "sequestered", not a true segregation, but as an accounting entry "on the general ledger." This,  
26 too, was false.

1 Now we have the confirmation hearing on the Debtor's Plan. The Debtor proposes to  
2 bifurcate the claim of JFS into secured and unsecured portions. The secured portion is to be paid  
3 over 8 years at the note rate of 7%. The unsecured portion will share in a pro-rata dividend  
4 payable over 6 years. JFS has voted to reject the Plan in its capacities as both a secured and  
5 unsecured creditor.

6 **SUMMARY OF GROUNDS FOR OBJECTION TO DEBTOR'S PLAN**

- 7 1. The Debtor Has Not Complied With Chapter 11 (Section 1129 (a)(2)).
- 8
- 9 2. The Debtor's Plan Fails to Disclose the Identity and Compensation  
10 of its Post Confirmation Management (Section 1129(a)(5)).
- 11 3. The Debtor's Plan Has Not Been Accepted By a Legitimate,  
12 Impaired Non-Insider Creditor Class (Sections 1129(a)(8) & (10)).
- 13 4. The Debtor's Plan Is Not Feasible (Section 1129(a)(11)).
- 14 5. The Debtor's Plan Does Not Meet the Requirements for a Cram  
15 Down Set Forth In Section 1129(b) Because It Is Not "Fair and  
16 Equitable" To the Secured Creditor JFS.

17 **ARGUMENT**

- 18 **1. The Debtor Has Not Complied With Title 11 (Section 1129 (a)(2)).**

19 Secured Creditor JFS continues to strenuously object to the theft of its cash collateral by  
20 the Debtor's management in gross violation of Section 363(b), compounded by (1) the Debtor's  
21 failure to file Monthly Operating Reports, (2) the repeated, false misrepresentations on the  
22 record that the cash collateral of JFS is being "sequestered," and (3) the Debtor's failure and  
23 refusal to respond to the modest discovery request of JFS on this issue.

- 24 **2. The Debtor's Plan Fails to Disclose the Identity and  
25 Compensation of its Post Confirmation Management (Section  
26 1129(a)(5)).**

The Debtor's Plan and related Disclosure Statement fail to specify the identity and  
compensation of the post confirmation officers and directors, as is expressly required by Section

1 1129(a)(5). This defect cannot be corrected now, since it is a key financial term which should  
2 have been disclosed to creditors to enable them to intelligently vote on the Debtor's Plan.

3  
4 **3. The Debtor's Plan Has Not Been Accepted By a Legitimate,  
Impaired Non-Insider Creditor Class (Sections 1129(a)(8) &  
5 (10)).**

6 The Plan has four classes: (1) "Priority Claims"; (2) the Secured Claim of JFS; (3)  
7 General unsecured claims; and (4) Insider interests.

8 There are no non-tax priority claim, and the claims bar date has lapsed. In other words,  
9 there are no creditors in this class.

10 The Class 2 Secured Claim of JFS has voted to reject the Plan. The Class 4 Interests  
11 cannot be counted due to their "insider status".

12 According to both the Debtor and JFS, JFS is undersecured. Pursuant to Rule 3018(d)  
13 JFS has the right to vote its claim in both the Secured Class 2 and the General Unsecured Class  
14 3. It has bifurcated its claim for voting purposes in the amount of \$750,000 secured and  
15 \$607,739.95 unsecured. Its Class 3 unsecured claim has likewise voted to reject the Plan. The  
16 Debtor's total scheduled unsecured claims, not counting JFS, are \$655,620.01.

17 It is mathematically impossible to the Debtor to procure the acceptance of a legitimate,  
18 non-insider impaired class.

19 **4. The Debtor's Plan Is Not Feasible (Section 1129(a)(11)).**

20 There are grave feasibility problems with the Debtor's Plan.

21 First, the Debtor's principals are themselves in no-asset Chapter 7 bankruptcies.

22 Second, the Debtor's plan is premised upon a \$100,000 cash contribution from  
23 Bouledoge, LLC, a shell entity wholly owned by the Debtor's principals at the time of their  
24 Chapter 7 bankruptcy filings, and thus the property of their respective individual Chapter 7  
25 Trustee. Either Bouledoge, LLC has nothing, or the Debtor's principals lied about that fact on  
26 their personal schedules.

1 Third, even if \$100,000 could be raised, that sum is far less than is required to adequately  
2 capitalize the Debtor.

3 Fourth, the Debtor must be able to generate sufficient cash to pay (1) ongoing operating  
4 expenses, including current taxes, (2) \$600,000 + in back priority payroll and sales taxes within  
5 the time required by Section 1129(a)(9)(C), (3) debt service payments to the Secured Creditor  
6 JFS on account of its secured claim, and (4) another \$3,680.56 per month to its unsecured  
7 creditors. The Debtor has not been able to do any of these four things for years, so we are  
8 mystified as to why it thinks it can start doing so now.

9  
10 **5. Assuming *Arguendo* that the Debtor's Plan Has Been Accepted**  
11 **by a Legitimate, Impaired Non-Insider Creditor Class, the**  
12 **Debtor's Plan Does Not Meet the Requirements for a Cram**  
**Down Set forth in Section 1129(b).**

13 **A. The Debtor's Plan is Not "Fair and Equitable" Because It**  
14 **Violates the Absolute Priority Rule**

15 The Debtor's Plan violates the absolute priority rule. Under the Debtor's Plan, its  
16 existing equity holders are retaining all of their managerial control, and the right to set their own  
17 salaries that come with that control. The Plan provides that the existing interests are nominally  
18 cancelled,<sup>1</sup> but goes on to provide that the Debtor's principals have the **exclusive right** to  
19 participate in the issuance of new LLC interests in the Debtor in consideration for their fictional  
20 \$100,000 capital contribution from Bouledoge, LLC. Of course, this attempt at meeting the "new  
21 value" exception to the absolute priority rule is directly contrary to the Supreme Court's decision  
22 in *Bank of America Nat'l Trust & Sav. Assn. v. 203 N. LaSalle St. Ptsp.* 526 U.S. 434 (1999),  
23 which held that "new value" investment schemes exclusively available to the Debtor's  
24 management violate the absolute priority rule.

---

25 <sup>1</sup> Well, maybe. The Plan provides at p.5: 7-9 that all equity interests will be cancelled.  
26 Then it goes on to provide at p. 5:23-25 that Messrs. Rutherford and Settle will retain their  
equity interests.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

2  
3  
4  
5  
6  
7  
8  
9  
10  
11

11  
12  
13  
14  
15  
16  
17

18  
1919  
2021  
22

Respectfully submitted,

MACCONAGHY & BARNIER, PLC

/s/ John H. MacConaghy  
John H. MacConaghy  
*Attorneys for Jim French Studios, Inc.*